

A charitable organization's exemption from tax was not affected by purchasing securities from its creator (and sole trustee) at the price he paid for them and reselling them at a profit.

Advice has been requested whether the transaction described below adversely affects the status of an organization that is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization purchased securities from its creator (and sole trustee) for the same price he paid for the securities. The fair market value of the securities at the time of sale to the organization was greater than the selling price. The organization immediately resold the securities at their fair market value to third parties in an independent transaction. The creator claimed a charitable contribution deduction equal to the difference between the fair market value of the securities at the time of the sale to the organization and the price at which they were sold to it.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

The organization's role in this transaction was solely to purchase securities at less than their fair market value. The purchase of securities from the creator was not in itself inconsistent with any exempt purpose. The transaction was a profitable one to the organization and thus made funds available for its exempt purposes, regardless of any tax benefits that accrued. There was no accommodation to the creator at the risk of loss of funds dedicated to exempt purposes. *Waller v. Commissioner*, 39 T.C. 665 (1963), acquiescence, C.B. 1963-2, 5.

Accordingly, the sale of securities to the organization under these circumstances did not affect its exemption from Federal income tax under section 501(c)(3) of the Code.